

THE INDUSTRIAL TRIBUNALS

CASE REF: 1617/05

CLAIMANT: James Robert Peifer

RESPONDENTS: 1. Grosvenor Grammar School
2. Belfast Education & Library Board

DECISION

The unanimous decision of the industrial tribunal is that:-

- (i) the respondents did not discriminate against the claimant on the ground of his sex; and
- (ii) the respondents did not discriminate against the claimant by way of victimisation.

Constitution of Tribunal:

Chairman: Mr D Buchanan

Members: Mr P Sidebottom
Ms M-J McReynolds

Appearances:

The claimant appeared in person and was not represented.

The respondents were represented by Ms A Finnegan, Barrister-at-Law, instructed by Education & Library Boards' Solicitors.

- 1(i) At the outset of the proceedings the claimant asked for permission to record the proceedings. He was reminded of the relevant provisions of Section 9 of the Contempt of Court Act 1981, and leave was granted to him on his undertakings:-
 - (a) to make copies of his recordings available to the tribunal and the respondents if required to do so; and

- (b) that any recording was only to be used for the purpose of the proceedings.
- (ii) The claimant also sought a four week postponement of the hearing, which we refused. He was busy preparing other cases for the tribunal, and was working on appeals to HM Court of Appeal, the Supreme Court of the United Kingdom, and the European Court of Justice. The instant case before the tribunal was impinging on his preparation of these other matters. However, the claimant's difficulties are to some extent the unfortunate and inevitable consequence of his choice to bring multiple claims before the tribunal, and it has to be remembered that this case and indeed the others which he launched at the same time have been going on for eight years, and it is in everyone's interest that they be brought to a conclusion in accordance with the strict timetable which has now been laid down. The importance of an early resolution of these matters was confirmed in the course of the hearing, where it became clear that notwithstanding that documentary evidence was still available relating to the appointment process in issue, not only the respondents' witnesses, but also the claimant, were having difficulties in recalling events from eight years ago, and in giving explanations for, or interpreting notes and documents which they had made, or seen, at the time.
- 2(i) The claimant, by a claim form presented to the tribunal on 23 November 2005, alleged that he had been discriminated against on the ground of his sex and victimised by the respondents when he made an unsuccessful application for the post of Classroom Assistant at Grosvenor Grammar School, Belfast.
- (ii) A Case Management Discussion in relation to this matter was held before the Vice President of the Tribunals on 4 October 2012 and a Record of Proceedings in relation to that Case Management Discussion issued on 15 October 2012. A copy of the Record of Proceedings is set out at **Appendix 'A'**.

The issues to be determined by the tribunal, in accordance with the Vice President's directions at the Case Management Discussion are set out at **Appendix 'B'**. In effect, this was the respondents' list of issues which they provided at the Case Management Discussion.

- (iii) The claimant had had the opportunity to prepare and provide alternative issues but did not do so, though it does appear he raised the issue of a potential claim for indirect discrimination. In this respect the Vice President recorded at *Paragraphs 2 and 3* of the Record of Proceedings:-

" ...

2. *In this situation the claimant had been interviewed for a Classroom Assistant's post and had been unsuccessful.*
3. *The claimant was asked to identify a provision, criterion or practice which impacted adversely and disproportionately on his gender. He was unable to do so. He was unable to show any detriment or adverse impact. I advised the claimant that this appeared to be a straightforward case where he was alleging that the short listing panel, with or without the assistance of the second-named respondent, had decided not to appoint him because of his gender. He was also*

alleging that they had unlawfully victimised him. The claimant was unable to point to any protected act upon which he relied.”

- (iv) At the commencement of the hearing the claimant renewed his submission that his claim was one of indirect discrimination. He made, and indeed continued throughout the proceedings to make, reference to the decision of the European Court of Justice in the case of **Centrum voor gelijkheid van kansen v Firma Feryn [2008] ICR 1390; [2008] IRLR 732** (to which we shall return later). He was again given the opportunity as regards a claim of indirect discrimination to identify any relevant provision, criterion or practice, but was unable to do so.

The respondents have at all times accepted that he met the short listing criteria.

- 3(i) In order to determine this matter we heard evidence from the claimant and we heard evidence from the following on behalf of the respondents:-

Mr John Lockett, who at the relevant time was Principal of Grosvenor Grammar School. He was present at the interview in his capacity as Secretary of the Board of Governors of the school. He made notes of the interview, but was a non-voting member of the panel

Governors at the time who gave evidence were:-

Mr Jonathan Wylie, a teacher at the school (he was a Teacher Governor);

Mr Jack McKinney, and Mr James Irvine (both Governors appointed by BELB, the latter having 20 years' experience in that role)

We also had regard to documentary evidence submitted by the parties.

- (ii) We find the facts set out in the following paragraphs.
- 4(i) The claimant has degrees in Accounting and Mathematics from established Universities in his native USA. He also has a post-graduate certificate in education. He has taught maths in secondary schools and also has worked as a supply teacher. However, he had had no full-time teaching experience for 25 years at the relevant time, and he had not previously been employed as a Classroom Assistant or Special Needs Teacher.

In the Summer of 2005 he began to apply for Classroom Assistant posts, and he stated that despite his qualifications he was happy to take such a job and, if necessary, to move from Derry where he continues to live, to another part of the province in order to take up any appointment which he might be offered.

- (ii) The post in Grosvenor Grammar School, with which we are here concerned, arose late in the summer of 2005. Mr Lockett, as principal, identified a requirement for a Classroom Assistant, to work on a one-to-one basis with a child with special educational needs, starting in September of that year, or as soon as possible afterwards. He informed the Belfast Education & Library Board ('BELB') who took charge of the initial stages of the recruitment process.

- (iii) A press advertisement was placed by BELB on 14 June 2005, with a closing date for applications of noon, on Friday 1 July 2005.

The post was a temporary one (subject to review) and the essential criterion was stated baldly and laconically as follows:-

“Applicants must hold a relevant qualification.”

This was repeated, without any further clarification as to what the relevant qualification was, in the body of the job description which also set out the main duties of the post, its anticipated duration, the hours of work and the numeration it attracted.

However, a summary of Joint Negotiating Council (JNC) Circular No 34 – issued on June 2004 – was also provided.

- (iv) The JNC for Education & Library Boards consisted of 32 members – 15 representing management side of the Education & Library Boards and 17 representing recognised trade unions. There were also two non-voting representatives nominated by the Department of Education for Northern Ireland. Circular 34, promulgated by the JNC, set out the qualifications for - *“Classroom Assistant – Special Schools/Classes or with statemented children”* – which were acceptable at that time. These included BTEC and NVQ awards, and also specified was a:-

“[t]eaching qualification in a nursery, special primary or post-primary school approved by Teacher Training Institution, former DENI [Department of Education for Northern Ireland]”.

- (v) The claimant’s degrees and post-graduate teaching qualification, all obtained in the USA, were recognised and accepted in the United Kingdom. He had been placed on the register maintained by the General Teaching Council in Northern Ireland, and consequently he met the criterion specified, i.e. he had a relevant qualification.
- (vi) The BTEC and NVQ awards referred to in *Sub-paragraph (iv) above* were in subjects such as Nursery Education, Childcare and Education, Early Years, Early Years Care and Education, and were typically held by persons who wished to work as and have a career as Classroom Assistants. The majority of Classroom Assistants – some 98% - were female. This was not disputed by the respondents. Additionally, those seeking these qualifications have to do relevant work or work experience.

However, the courses set out in JNC 34 are open to everyone, and there was nothing to stop any male candidate, including the claimant, enrolling with a view to obtaining the appropriate qualification.

- 5(i) Thirteen applications were received for this post by BELB. There were 12 female applicants and one male (the claimant). It was determined at BELB level that eight of these people – seven females and the claimant – met the essential criterion and their applications were forwarded to the Headmaster of the school in his capacity as Secretary of the Board of Governors. He had no knowledge of the identity of the five candidates sifted out by BELB, or of any details relating to their applications.

No further sifting or short listing was done at the school, either by the Headmaster or any Committee or Sub-committee of the Board of Governors. The reason for this was the perceived pressure of time. It was hoped the appointment would be made in time for the successful candidate to start work in September, and interviewing eight candidates for one post was not looked upon as an unmanageable exercise.

- (ii) Subsequently, all eight candidates who had been deemed eligible for appointment at BELB level, including the claimant, were invited for interview by the school's Board of Governors. This was done by letter of 30 August 2005, for interviews on 7 September 2005. This letter was a proforma letter used by the Principal's secretary when inviting candidates to various interviews held in the school, and in relation to the competition for the Classroom Assistant post it wrongly stated that the first part of the interview would be a word processing exercise. When she discovered the mistake, she brought it to Mr Lockett's attention and suggested that an amended letter should be sent. However, because of time-constraints and the nearness of the interviews, it was decided that candidates should be phoned instead and told that there would be no word processing test.

Every potential interviewee had received the same letter containing the same mistake, and each was informed of that mistake. No-one therefore received different treatment as a result of this unfortunate error.

- (iii) One of the other candidates, female candidate 'C', who was also invited for interview at the school, had written on her application form, in relation to her NVQ3 level qualification in Early Years Care and Education:-

"Work completed, awaiting certificate."

She had written this across the columns headed 'Grade' and 'Date obtained'.

However, from a handwritten note on the application form and from what is effectively an aide-memoire written by the Principal on what seems, from the only copy available, to be a compliments slip, it seems that BELB had raised a query about whether candidate 'C' had the required qualifications and that the Principal and the Sub-committee of the Board of Governors were aware of this issue.

In essence, BELB had left it to the Board of Governors to sort the matter out at the interview stage.

The claimant took issue with this, and said that candidate 'C's short listing was in breach of BELB's policy that candidates with 'potential' (as he termed it) qualifications should not be shortlisted. We have not seen any evidence of such a policy. In any event the practice of short listing candidates for a post (subject to them obtaining a qualification) is hardly unusual or objectionable in itself. Even if there were a breach of BELB policy, it is not one from which discrimination should be inferred, as it impacted equally on all the other candidates who presented themselves for interview.

- (iv) In advance of the interview, the Principal made arrangements for the composition and attendance of the members of the interview panel. A female Governor who had initially been approached to be a member could not in fact attend as the date for the interview clashed with a holiday she had booked. Consequently, it was an

all-male panel, comprising the three Governors mentioned at *Paragraph 3(i) above*, another Governor, Dr Barr, and with the Principal attending in a non-voting capacity as secretary.

- 6(i) The Principal also prepared a draft list of questions to be put to the candidates at interview. Originally there were four of these, two of them having a 'follow-up' aspect. Before the interview the four questions were reduced to three by the interviewers. The Governors also decided not to award points for experience or qualifications, but rather that points for these categories would be awarded on the basis of candidates' answers to the set questions. It was felt that the job description criteria were subsumed or incorporated into those questions and that in answering Question 1, in particular, candidates would have the opportunity to outline their qualifications and experience.

Each of the three questions carried 15 marks. In addition to the questions, candidates were marked under two other categories. These were 'Impact/Innovation' carrying 30 marks and 'Leadership/Motivation', with 20 marks. All candidates were asked the same questions and had the same time to answer.

There was nothing inherently discriminatory in any of the questions asked, and the claimant does not make that case in any event.

- (ii) By 7 September 2005, two of the shortlisted candidates had withdrawn from the competition. At the interviews, Governors were provided with application forms, and a copy of the job description. The agreed questions were addressed to each candidate by the Principal on behalf of the Board of Governors, and candidates were marked by each of the four Board members, who recorded their marks and comments on a proforma mark sheet. (This proforma was widely used in interview at the school, and was not designed specifically for this competition.)
- (iii) At this stage, eight years after the event, the parties recollections of the candidates and their answers are very limited. The Principal, who had no vote, did recall that the claimant failed to answer questions posed of him, and stated that he was not surprised when he was not appointed. He did remember, perhaps unsurprisingly, the claimant, when asked how he would deal with a child who was misbehaving, saying that he would '*take him out for a drink*'. We stress that the Principal very fairly emphasised that there was no suggestion that the drink was alcoholic. The claimant was somewhat vague when asked about this remark and obviously eight years on the exact context of both question and answer have become lost in the mists of time. However, it was still an odd remark to make, though there is nothing to suggest it played any role in the claimant's non-appointment to the post.
- (iv) The Principal, and the Governors who gave evidence, are emphatic that at the interview, no mention was made of gender and that it did not play any part in the decision-making process. More generally, Mr Wylie, who we considered to be an impressive witness, and who accepted that he had a very limited recollection of the interview process, did nonetheless recall the contrasting performances of the claimant and the successful candidate, and the claimant's inadequate discussion of 'Leadership/ Motivation'. He relied principally on his notes, made at the time reflecting the performance of the candidates at interview. His notes in relation to successful candidate 'F' show that candidate's answers as clearly addressing the issues she was asked about in the questions put to her at interview.

Mr Irvine, too, relied on the fact that his scores were a reflection of his assessment, made at the time, of the quality of the answers to the questions posed. He accepted that in his view experience as a Classroom Assistant was more germane to the post under consideration and stated, unsurprisingly, that a candidate with that experience would have an advantage over a candidate without it who was applying for the same post. The claimant sought to misrepresent this as a statement by the witness that Classroom Assistant experience was given priority over other forms of relevant experience which met the criterion for the post.

- (v) The other Governor who gave evidence, Mr McKinney, did not score the claimant at all under 'Impact/Innovation' or 'Leadership/Motivation'. The claimant was the last candidate to be interviewed.

Mr McKinney, who seems to have retired as a Governor shortly after the interview of the claimant, had no real recollection of the appointment process. He stated that it would normally have been his practice to give a mark for all categories which were scored, and he could not give any reason why he did not do so. He speculated that as the claimant was the last candidate to be interviewed, and because his performance against the scores Mr McKinney had recorded for the other candidates was so poor, that he did not bother to mark for these categories on the basis that at that stage it would have made no difference to the outcome. While on the basis of the score sheets before us it looks as if that would indeed have been the case, this was a somewhat casual approach to take, and does not disclose a satisfactory state of affairs in a public appointment process. The fact that it would not have made any difference to the ultimate outcome hardly excuses it.

- 7(i) The marking generally, and particularly in respect of the two categories : 'Impact/Innovation' and 'Leadership/Motivation' appears to have been highly subjective. There was no marking scheme, in the sense that there was no discussion or determination in advance of what might be the points looked for in an answer.

As far as the marks awarded were concerned, each interviewer totalled up his own marks for each candidate at the conclusion of that candidate's interview, and used that mark in his contribution to what was a final 'global' discussion of the respective merits of each candidate. Marks were therefore only used as a guideline by each interviewer. There was no aggregation or averaging of the marks in deciding the candidate to be appointed.

- (ii) In the final discussions a female candidate 'F' was recommended to BELB for appointment to the post. Another female candidate 'A' was recommended as the reserve candidate. Each of the Governors reached the same conclusions as far as the selection of the successful and reserve candidates were concerned.

Candidate 'C', referred to above, about whose qualification a query had been raised, did not ultimately provide evidence that she had the relevant qualification and the Governors eliminated her from the competition. This is further evidence that if she had been shortlisted in breach of a BELB policy, it did not affect the outcome of the process.

(iii) On 8 September 2005, the Principal wrote to the Human Resources Department of BELB, informing them of the recommendation of the Board of Governors that candidate 'F' be appointed, and asked that this be arranged as soon as possible. Appointment was subject to the taking up of satisfactory references (each candidate had to provide two referees). It is unclear to us whether the successful candidate's referees were in fact approached, but the standard 'vetting' reference relating to her suitability to work with children was certainly sought.

8(i) In relation to the claimant's claim of victimisation, it is convenient to deal discretely with the facts relating to it.

(ii) At the time of the vacancy in Grosvenor Grammar School, the claimant had brought other complaints. Part of his claim is that the failure to appoint him to the Grosvenor Grammar School post was an act of victimisation on the part of the respondents. There is no evidence of this, as opposed to speculation on the claimant's part. Even if someone in the HR Department of BELB who initially processed his application was aware of his other claims, and it has to be emphasised that there is absolutely nothing to show that this was or might have been the case, there is no evidence to show that such information was passed on to the School Principal or the members of the Sub-committee of the Board of Governors. We accept the testimony of the Principal and Governors who gave evidence that none of them had any knowledge of the claimant's previous claims. The claimant, in his submissions at the close of the case, said that the respondents' witnesses were being untruthful in that respect. We reject that submission.

9 We now set out the relevant law in relation to the claimant's claims of sex discrimination and victimisation:-

(i) Articles 3 and 8 of the Sex Discrimination (Northern Ireland) Order 1976 as amended, make it unlawful to discriminate against a man in the context of employment by treating him less favourably than one would treat a woman in the same circumstances.

Article 63A sets out the now familiar provision found in anti-discrimination legislation providing that where a claimant proves facts from which a tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an unlawful act of discrimination, the tribunal must uphold the complaint unless the respondent proves that he did not commit that act.

Victimisation is covered by Article 6 of the 1976 Order. This form of discrimination applies where the claimant has performed a protected act, in this case the making of a grievance. The claimant must identify an appropriate comparator, and the doing of the protected act must be the cause of the less favourable treatment. The appropriate comparison is between the claimant and someone who has not done a protected act. See : **Chief Constable of West Yorkshire Police v Khan [2007] ICR 2065 HL.**

(ii) In **Igen Ltd (formerly Leeds Carers Guidance) and Others v Wong Chamberlain Solicitors and Another v Emokpae; and Brunel University v Webster [2006] IRLR 258**, the Court of Appeal

in England and Wales set out guidance on the interpretation of the statutory provisions shifting the burden of proof in cases of sex, race, and disability discrimination. This guidance is now set out at an Annex to the judgment in the *Igen* case, op.cit 269,270.

We therefore do not set it out again, but we have taken it fully into account.

- (iii) In short, the claimant must prove facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of unlawful discrimination on one or more of the proscribed grounds. The tribunal will also consider what inferences it is appropriate to draw from the primary facts which it has found. By way of example, such inferences can include inferences that are just and equitable to draw from the provisions relating to statutory questionnaires, failure to comply with any relevant Code of Practice, or from failure to discover documents or call an essential witness.

If the claimant does prove facts from which the tribunal could conclude in the absence of an adequate explanation from the respondent that the latter has committed an unlawful act of discrimination, then the burden of proof moves to the respondent. To discharge that burden the respondent must show, on the balance of probabilities, that the treatment afforded to the claimant was in no sense whatsoever on a proscribed ground. The tribunal must assess not merely whether the respondent has proved an explanation for the facts from which inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that (in this case) sex was not a ground for the treatment in question. Since the facts necessary to prove an explanation will normally be in the possession of a respondent, a tribunal will expect cogent evidence to discharge that burden of proof.

- (iv) Although the above logically establishes a two-stage process, it is not to be applied slavishly or mechanically, and in deciding whether the claimant has made out a prima facie case the tribunal must put to one side the employer's explanation for the treatment, but should take into account all other evidence, including evidence from the employer.

(See : *Laing v Manchester City Council* [2006] IRLR 748 EAT; *Madarassy v Nomura International PLC* [2007] IRLR 27; and *Arthur v Northern Ireland Housing Executive and Another* [2007] NICA 25)

- (vii) These cases were considered more recently by HM Court of Appeal in Northern Ireland in *Curley v Chief Constable of the Police Service of Northern Ireland and Another* [2009] NICA 8 and *Nelson v Newry & Mourne District Council* [2009] NICA 24.

In the former Coghlin LJ, at *Paragraph 16* of the judgment, emphasised the need for tribunals hearing cases of this nature to

keep firmly in mind the fact that such claims are founded upon an allegation of discrimination. This was re-emphasised by Girvan LJ, at *Paragraph 24* of the judgment in the latter case.

- 10(i) We reiterate that we consider that here we are dealing with a claim of direct sex discrimination (and victimisation). We have made earlier reference to the claimant's continued reliance on the **Feryn** case (see : *Paragraph 2(iv) above*). In purported reliance on that case the claimant disputes the proposition that in order to succeed in a claim for indirect discrimination under Article 3(2)(b) of the 1976 Order, the application of the provision, criterion or practice in question must cause him to suffer a detriment. This view was considered, and rejected by the Court of Appeal in earlier claims by the claimant:-

James Robert Peifer v Castlederg High School, St Patrick's and St Brigid's College Claudy and Western Education & Library Board & Another [2012] NICA 21

We refer to the decision of Morgan LCJ on this point, which is set out at *Paragraphs 18 – 23* of the judgment.

- (ii) In these cases the claimant met one of the criteria for the post – qualified teacher status. The respondents accept that he was qualified for the post and called him to interview on that basis. We are also satisfied there was nothing to stop him attaining any of the alternative qualifications set out, had he so wished.
- 11(i) In relation to the claimant's claim of direct discrimination, there are certain features of the recruitment process which cause us concern. These include the error in the initial letter inviting candidates to interview, the all male interview panel (in breach of the Code of Practice) and Mr McKinney's failure to mark the claimant under two categories. There was also a lack of objectivity in the questions posed to candidates at interview. The procedure for taking up references in relation to successful candidates was vague, and the issue of whether BELB had a settled policy of excluding candidates like C (who was awaiting, but had not been awarded her qualification) was never clarified.

These matters give the appearance of a process which was casual, if not sloppy, and not in accordance with good practice. However, most of these defects impacted on all the candidates called to interview, and we do not draw an adverse inference against the respondents from them.

- (ii) The interview panel were entitled to probe the experience of the respective candidates, and we are satisfied that they decided not to appoint the claimant because he performed poorly at interview and did not provide them with evidence that he would perform the duties associated with the post or explain how his limited teaching experience fitted him for the role of Classroom Assistant. As we have noted above, at *Paragraph 4(i)*, he had no previous experience as a Classroom Assistant or Special Needs Teacher, and he had no full-time teaching experience in the 25 years preceding his applications for this and other similar posts.

- (iii) We therefore dismiss his claim of sex discrimination. Further, having regard to our findings at *Paragraph 8 above*, we also dismiss his claim of victimisation.

Chairman:

Date and place of hearing: 8 – 11 April 2013, Belfast

Date decision recorded in register and issued to parties:

A P P E N D I X 'A'

**RECORD OF PROCEEDINGS DATED
15 OCTOBER 2012 OF
CASE MANAGEMENT DISCUSSION HELD
ON 4 OCTOBER 2012**



**THE INDUSTRIAL TRIBUNALS
CASE MANAGEMENT DISCUSSION**

CASE REF: 1617/05

CLAIMANT: James Robert Peifer

RESPONDENT: 1. Grosvenor Grammar School
2. Belfast Education and Library Board

DATE OF HEARING: 4 October 2012

REPRESENTATIVES OF PARTIES:

CLAIMANT: In person and was not represented.

RESPONDENTS BY: Mr A Colmer, Barrister-at-Law, instructed by
Education & Library Legal Service.

**Case Management Discussion
Record of Proceedings**

Issues

1. The respondents had provided the claimant with a 'draft' legal and factual issues on 1 October 2012. The claimant confirmed that he had not properly read this document and was not in a position to respond. He also advised that he had not prepared an alternative.
2. In this situation the claimant had been interviewed for a Classroom Assistant's post and had been unsuccessful.
3. The claimant was asked to identify a provision, criterion or practice which impacted adversely and disproportionately on his gender. He was unable to do so. He was unable to show any detriment or adverse impact. I advised the claimant that this appeared to be a straightforward case where he was alleging that the short listing panel, with or without the assistance of the second-named respondent, had decided not to appoint him because of his gender. He was also alleging that they had unlawfully victimised him. The claimant was unable to point to any protected act upon which he relied.
4. Following discussion, I accepted the respondents' 'draft' as the 'final' statement of legal and factual issues with the manuscript amendment attached to this Record of Proceedings.

Interlocutory matters

5. The claimant persisted, at some length, in seeking to introduce wider matters. After discussion, I ruled that this was a simple issue involving a claim that the claimant had not been shortlisted for an appointment panel which determined an appointment as a Classroom Assistant for Children with Special Educational Needs. It would appear that he had been ruled out because, according to the respondents, it was not apparent from his application, according to the respondents, that he had a minimum of one year's experience working with children with Special Educational Needs.
6. I determined that the only relevant discovery, which the respondents should provide to the claimant **no later than 5.00 pm on 30 October 2012**, was:-
 - (i) All documents of whatever kind which are in the possession of the panel or of the panel members, and which relate to the short listing exercise of which the claimant complains.
 - (ii) All documents of whatever kind in relation to any instruction, advice or guidance given by the second-named respondent to the short listing panel or to the first-named respondent before the relevant short listing exercise of which the claimant complains.
7. The respondents had no discovery application to make of the claimant.
8. In relation to additional information, the claimant embarked on a disjointed explanation of what he would intend to seek in relation to what he regarded as institutionalised sex discrimination. I stressed again that this was a statutory tribunal with limited remit. It was not an open public enquiry to determine the alleged wrongdoings of various Education & Library Boards. The details of the claim and of the response were reasonably clear. My ruling was that any other matters could be determined by way of cross-examination of witnesses and that no further interlocutory process was required.

Preliminary issues

9. There were no preliminary issues requiring a separate hearing.

Orders

10. After discussion I took the view that this was not the type of case where the witness statement procedure would be productive; or indeed the type of case where the tribunal's directions were likely to be obeyed or followed to the letter. I therefore ruled that this, unusually, was the type of case which would be best dealt with by oral evidence and directed that it would be dealt with in that manner.

Schedule of Loss

11. The claimant was directed to provide a schedule of loss comprising **no more than two A4 pages** setting out in **clear and readily understandable terms** the exact financial loss claimed by the claimant in relation to this matter. That was to be provided to the respondents' solicitor **no later than 5.00 pm on 30 October 2012**.

Bundles

12. I took both parties through the standard directions in relation to bundles and I advised the claimant that it was his responsibility to produce bundles in this matter. Bundles **must** be compliant with the directions and must be agreed. If a failure to agree a focused and proper bundle in compliance with directions could be laid at the door of either party, costs could well follow:-

- (a) the bundle must contain only those documents which are necessary for the tribunal to hear and determine the claim. The bundle is not meant to contain all documentation which has been disclosed between the parties, documents should appear only once in the bundle;
- (b) the bundle must contain a detailed index and each page in the bundle must be clearly and consecutively numbered;
- (c) each document must appear in chronological sequence;
- (d) the bundle may not, without the prior consent of the tribunal, exceed one Lever Arch folder.

Date of Hearing

13. Again the claimant asked for this matter to be kept in abeyance until *3 July 2013*. That was again refused and following discussion the matter was listed for five days maximum from:-

8 – 12 April 2013



Vice President:

Date: 15 October 2012



1. If any party fails and/or is unable to comply with any of the above Orders, any application arising out of such failure or inability to comply must be made promptly to the tribunal and in accordance with the Industrial Tribunals Rules of Procedure 2005.
2. Failure to comply with any of these Orders may result in a Costs Order or a Preparation Time Order or a Wasted Costs Order or an Order that the whole or part of the claim, or as the case may be, the response may be struck out and, where appropriate, the respondent may be debarred from responding to the claim altogether.
3. Under Article 9(4) of the Industrial Tribunals (Northern Ireland) Order 1996, any person who, without reasonable excuse, fails to comply with a requirement to grant discovery and inspection of documents under Rule 10(2)(d) of the Industrial Tribunals Rules of Procedure 2005 shall be liable on summary conviction to a fine not exceeding Level 3 on the standard scale - £1,000 at 3 September 2007, but subject to alteration from time to time.
4. A party may apply to the tribunal to vary or revoke any of the above Orders in accordance with the Industrial Tribunals Rules of Procedure 2005.

A P P E N D I X ' B '

LIST OF ISSUES FOR DETERMINATION

INDUSTRIAL TRIBUNALS (CONSTITUTION OF RULES AND PROCEDURES) REGULATIONS
(NORTHERN IRELAND) 2005

JAMES PEIFER
-v-
GROSVENOR GRAMMAR SCHOOL
BELFAST EDUCATION AND LIBRARY BOARD

CASE REFERENCE 1617/05

RESPONDENTS' DRAFT STATEMENT OF LEGAL AND FACTUAL
ISSUES

BACKGROUND

1. The Claimant applied to the Respondents for the temporary position (subject to review) of Classroom Assistant (special needs) at Grosvenor Grammar school.
2. There was a total of 13 applicants for the position – 12 female and 1 male.
3. Of these applicants, 8, including the Claimant, were subsequently called for interview on 7th September 2005 following shortlisting. However, two applicants subsequently withdrew prior to interview.
4. One female applicant was appointed. One female candidate was named as a reserve. The Claimant was unsuccessful in his application.

Statement of Issues

1. It is respectfully submitted to the Tribunal that the issues for the Tribunal to consider are as follows:

Legal Issues

1. For the purposes of ~~Article 3(2)(a)~~ of the Sex Discrimination (Northern Ireland) Order 1976, on the grounds of the Claimant's sex, did the Respondent treat the Claimant less favourably than it treated or would have treated a woman?
2. For the purposes of ~~Article 8(1)(c)~~ of the Sex Discrimination (Northern Ireland) Order 1976, did the Respondent directly discriminate against the Claimant by refusing or deliberately omitting to offer the Claimant employment?
or unlawfully discriminate him
3. If the Respondent did discriminate against the Claimant, what relief is the Claimant entitled to pursuant to Article 63 of the Sex Discrimination (Northern Ireland) Order 1976?

Factual Issues

4. Did the Respondent, in the course of the interview process for the position of Classroom Assistant subject the Claimant to direct sex discrimination?